Calendar No. 329

98TH CONGRESS, 1st Session | SENATE | REPORT No. 98-204

PROVIDING FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED THE ASSINIBOINE TRIBE OF THE FORT BELKNAP INDIAN COMMUNITY, MONTANA, AND THE ASSINBONE TRIBE OF THE FORT PECK INDIAN COMMUNITY, MONTANA, IN DOCKET NUMBERED 10-81L BY THE UNITED STATES COURT OF CLAIMS, AND FOR OTHER PURPOSES

JULY 29 (legislative day, JULY 25) 1983.—Ordered to be printed

Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1148]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1148) to provide for the use and distribution of funds awarded the Assiniboine Tribe of the Fort Belknap Indian Community, Montana, and the Assiniboine Tribe of the Fort Peck Indian Community, Montana, in docket number 10-81L by the United States Court of Claims, and for other purposes, having considered the same, reports favorably thereon with amendment(s) and recommends that the bill as amended do pass.

The amendments are as follows:

In the title of the bill after "Fort Peck Indian" delete the word "Community" and insert in lieu thereof "Reservation".

On page 2 line 5, delete the word "Community" and insert in lieu thereof "Reservation".

On page 2 line 10, after the word "with" insert "planning for".

On page 2 line 13, after "follows"; delete "provided that no person shall be eligible to share in more than one award in his own right":

On page 2 line 23, delete "enrollee". and insert in lieu thereof "duly enrolled member".

On page 3 line 15, delete the word "Community" and insert in lieu thereof "Reservation"

On page 3 line 16, delete the words "Treaty Committee" and insert in lieu thereof "Council"

On page 3 line 17, after the word "with" insert "planning for"

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On page 3 line 20, after the word "follows" delete "provided that no person shall be eligible to share in more than one award in his own right":

On page 3 line 23, delete the word "Community" and insert in lieu thereof "Reservation"

On page 4 line 4, insert a "period" after the word "enrollee" and strike the remaining words in lines 4 thru 8.

On page 4, strike all of section 3b lines 9 thru 16 and insert a new paragraph (b) as follows: "30% of these funds and any amounts remaining after the per capita payment, shall be held in trust and invested by the Secretary for the benefit of the Assiniboine Tribe of the Fort Peck Indian Reservation and its members. The principal of the funds and the income therefrom shall be applied and used for the benefit of the Assiniboine Tribe of the Fort Peck Indian Reservation and its members in accordance with reasonable terms established by the Fort Peck Assiniboine Council with the concurrence of the Tribal Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, and approved by the Secretary: *provided* that until such terms have been agreed upon, the Secretary shall fix the terms of the administration of the portion of the funds as to which there is no agreement".

On page 4 line 20, after "with" delete the remainder of the sentence thus line 23 and insert in lieu thereof "regulations of the Secretary".

On page 5 line 1, after the word "Per Capita" insert "or family interest".

PURPOSE

Funds to satisfy claims in docket 10–81L were appropriated on September 30, 1981. S. 1148 provides for the use and distribution of these funds awarded by the Court of Claims to the Assiniboine Tribe of the Ft. Belknap Indian Community, Mont., and the Assiniboine Tribe of the Ft. Peck Indian Reservation, Mont.

BACKGROUND

These two tribes brought this action in a representative capacity on behalf of the Assiniboine Nation, recognized as the owner of the land in question by the Treaty of Fort Laramie of September 17, 1851, 11 Stat. 749. Jurisdiction of the Court of Claims was vested by the Act of October 10, 1980, Public Law 96–434, which stated in Section 1:

> Notwithstanding section 2401 and 2501 of title 28, United States Code, and section 12 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1052; 25 U.S.C. 70k), and notwithstanding the lapse of time, statutes of limitations, or the defense of res judicata or collateral estoppel, or any other provisions of law, jurisdiction is hereby conferred upon the Court of Claims to hear, determine, and render judgment on any claim filed by the Assiniboine Nation or Tribe within one year from the date of this Act for the taking under the (F)ifth (A)mendment of the Constitution of the six million four-hundred and seventy-seven thousand nine-hundred and forty acres of land defined as the territory of the Assiniboine

Nation in the Treaty of Fort Laramie of September 17, 1851 (11 Stat. 749), to which the Assiniboine Nation and the United States were parties.

In *Assiniboine Indian Tribe* v. *United States*, 77 Ct. Cl. 347 (1933), appeal dismissed and certiorari denied 292 U.S. 606 (1934), the Court determined that the above described land contained 6,477,940 acres. Under Public Law 96–434, conferring jurisdiction upon this Court, that acreage figure was binding. The Court also determined that as of the various dates of appropriation by the United States, the average value per acre of these lands was 50 cents, for a total of $3,328,970. Under Public Law 96–434, that value figure was also binding in this case.

Further, a ruling was requested that the subject lands had been taken within the meaning of the fifth amendment. Thus, it was claimed that plaintiffs had been damaged to the extent of the value of the lands so taken, that is 50 cents per acre, as of the governing dates of taking, plus interest at 5 percent per annum. Suit to recover just compensation for the taking of this land was filed before the U.S. Court of Claims on January 12, 1981, pursuant to authority conferred by Public Law 96–434, 94 Stat. 1859. On August 13, 1981, a trial judge of the Court of Claims filed a memorandum report recommending that, in accordance with a stipulation of the parties filed August 13, 1981, plus interest of $359.44 per day for each day commencing August 1, 1981, through the date of the final order, for the Assiniboine Tribe of the Fort Peck Indian Reservation, Mont., as representative of the Assiniboine Nation. A final award of $16,389,593 was made on September 30, 1981.

Establishment of Fort Peck and Fort Belknap Reservations

The area that includes the present-day Fort Peck Indian Reservation was established by an Executive Order of 1873 as a home for both Assiniboine and Sioux Tribes. The reservation boundaries were set by Congress in 1888. The Assiniboine and Sioux Tribes of the Fort Peck Reservation are organized under a non-IRA Constitution adopted by the tribes on October 1, 1960, and approved by the Secretary of the Interior on November 30, 1960. Since this time, the Fort Peck Executive Board, composed of a chairman, vice chairman, secretary-accountant, sergeant-at-arms, and 12 board members, two each from six districts, governs the tribe. A general council is composed of all tribal members.

The area that includes the present-day Fort Belknap Indian Reservation was established by the Act of April 15, 1874. The Assiniboine and Gros Ventre Tribes of the Fort Belknap Indian Reservation form a federally chartered corporation, as the Fort Belknap Indian Community, under the Indian Reorganization Act of 1934. A constitution and bylaws were adopted by referendum on September 25, 1935, and a corporate charter was adopted on August 25, 1937. Since this time, the Fort Belknap Community Council has been the governing body for the Indian community and carries on the political, social and economic affairs of the community. The community council is composed of six Assiniboine and six Gros Ventre members.

Division of award

A Bureau of Indian Affairs hearing of record was held on Ft. Belknap on June 8, 1982 and Fort Peck on June 9, 1982, under the provision of the Indian Judgment Act. The Assiniboine Tribe of the Fort Belknap Indian Reservation proposed an 80 percent per capita and 20 percent programing. On Fort Peck, the Assiniboine Tribe proposed a 70 percent per capita and 30 percent for programing.

Furthermore, it seems that the Fort Peck Assiniboines apparently agreed to a quarter or more Assiniboine blood requirement to be eligible to participate in the distribution of this award. However, a referendum was held in Oswego, Mont., on June 3, 1982, at which a majority voted in favor of dropping the blood quantum requirement entirely.

A secretarial plan for the use and distribution of these funds was not submitted in a timely manner to the Congress because of a lack of agreement about the manner in which the funds should be divided between the reservations.

For this reason, legislation has to be introduced in this Congress to provide a formula for distribution. The question of the proper percentage division of the funds between the two beneficiary Assiniboine Tribes at Fort Belknap and Fort Peck was resolved at a meeting in Billings, Mont., on March 31, 1983. At that time, an agreement was entered into by the Fort Peck Assiniboine Council and the Fort Belknap Treaty Committee which would divide the funds with 42.5 percent to be awarded the Fort Belknap Assiniboine and 57.5 percent awarded to the Fort Peck Assiniboine. The minority staff director of the Select Committee on Indian Affairs and a representative of the BIA were present at that meeting.

LEGISLATIVE HISTORY

S. 1148 was introduced by Senator Melcher on April 26, 1983, and referred to the Select Committee on Indian Affairs. A hearing on this measure was held on July 13, 1983.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on July 28, 1983, with a quorum present, recommends by a unanimous vote that the Senate pass S. 1148 as amended.

COMMITTEE AMENDMENTS

At the committee hearing on July 13, amendments were suggested by the Department of the Interior, the Treaty Committee of the Assiniboine Tribe of the Fort Belknap Indian Community and the General Council of the Assiniboine Tribe of the Fort Peck Indian Reservation. On the basis of these materials, staff makes the following recommendations for amendments to S. 1148. These amendments are for the most part technical in nature.

(1) In the preamble of the bill after "Fort Peck Indian" delete the word "Community" and insert in lieu thereof "Reservation"

(2) On page 2 line 5, delete the word "Community" and insert in lieu thereof "Reservation".

(3) On page 2 line 10, after the word "with" insert "planning for".

(4) On page 2 line 13, after "follows"; delete "provided that no person shall be eligible to share in more than one award in his own right":

This proviso is unnecessary since section 2 involves only the Assiniboine Tribe of the Fort Belknap Indian Community.

(5) On page 2 line 23, delete "enrollee". and insert in lieu thereof "duly enrolled member".

(6) On page 3 line 15, delete the word "Community" and insert in lieu thereof "Reservation"

(7) On page 3 line 16, delete the words "Treaty Committee" and insert in lieu thereof "Council"

(8) On page 3 line 17, after the word "with" insert "planning for"

(9) On page 3 line 20, after the word "follows": delete "provided that no person shall be eligible to share in more than one award in his own right";

This proviso is unnecessary since section 3 involves only the Assiniboine Tribe of the Fort Peck Indian Reservation.

(10) On page 3 line 23, delete the word "Community" and insert in lieu thereof "Reservation"

(11) On page 4 line 4, insert a "period" after the word "enrollee" and strike the remaining words in lines 4 thru 8.

This proposed amendment would provide that the roll of those eligible to share in per capita distribution of the Fort Peck Assiniboine portion of the judgment would consist of the presently enrolled Assiniboine of Fort Peck with the roll made current as the date of enactment of this Act. This deletion is in accordance with the wishes of the duly elected officials of the Fort Peck Reservation and is recommended by the Department of the Interior.

(12) On page 4, strike all of section 3b lines 9 thru 16 and insert a new paragraph (b) as follows: "30% of these funds and any amounts remaining after the per capita payment, shall be held in trust and invested by the Secretary for the benefit of the Assiniboine Tribe of the Fort Peck Indian Reservation and its members. The principal of the funds and the income therefrom shall be applied and used for the benefit of the Assiniboine Tribe of the Fort Peck Indian Reservation and its members in accordance with reasonable terms established by the Fort Peck Assiniboine Council with the concurrence of the Tribal Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, and approved by the Secretary: *provided* that until such terms have been agreed upon, the Secretary shall fix the terms of the administration of the portion of the funds as to which there is no agreement".

(13) On page 4 line 4 after "with" delete the remainder of the sentence thru line 23 and insert in lieu thereof "regulations of the Secretary".

(14) On page 5 line 1 after the word "Per Capita" insert "or family interest".

SECTION-BY-SECTION ANALYSIS

Section 1. Authorizes the distribution of funds awarded in docket numbered 10–81L of the Court of Claims on the basis of 42.5 percent of award funds to the Assiniboine Tribe of the Fort Belknap Indian

Community and 57.5 percent of the award funds to the Assiniboine Tribe of the Fort Peck Indian Reservation.

Section 2. Provides the funds apportioned to the Assiniboine Tribe of the Fort Belknap Indian Community be distributed in the following manner:

(a) Eighty percent (80%) per capita to all duly enrolled Assiniboine members of the Fort Belknap Indian Community.

(b) Twenty percent (20%) invested for the benefit of the Tribe.

Section 3. Provides the funds apportioned to the Assiniboine Tribe of the Fort Peck Indian Community be distributed in the following manner:

(a) Seventy percent (70%) per capita to all duly enrolled Assiniboine members of the Fort Peck Indian Reservation.

(b) Thirty percent (30%) invested for the benefit of the Tribe.

Section 4. Provides that per capita shares of living competent adults shall be paid directly to them; shares of deceased individual beneficiaries and shares of minors shall be paid in accordance with existing federal regulations.

Section 5. Provides that none of the funds distributed per capita or held in trust under the provisions of this Act shall be subject to Federal or State income taxes nor shall they be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act or any Federal or federally assisted programs.

Section 6. Authorizes the Secretary of the Interior to prescribe rules and regulations to carry out the provisions of this Act, including the establishment of deadlines for filing applications for enrollment.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 1148, as amended, as provided by the Congressional Budget Office, is outlined below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 29, 1983.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1148, a bill to provide for the use and distribution of funds awarded the Assiniboine Tribe of the Fort Belknap Indian Community, Montana, and the Assiniboine Tribe of the Fort Peck Indian Community, Montana, in docket numbered 10–81L by the United States Court of Claims, and for other purposes, as ordered reported by the Senate Select Committee on Indian Affairs, July 28, 1983.

Based on this review, it is expected that no additional cost to the government would be incurred as a result of enactment of this legislation. S. 1148 provides the legal procedures necessary to distribute approximately $16.4 million appropriated in fiscal year 1981 to satisfy particular claims against the government.

Enactment of this bill would not affect the budgets of state and local governments.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM,
(For Alice M. Rivlin, Director).

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The committee believes that S. 1148 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The pertinent communication received by the committee from the Department of the Interior is set forth below:

STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, JULY 13, 1983

We recommend enactment of S. 1148, if amended as we suggest.

On September 30, 1981, the U.S. Court of Claims made a final award of $16,389,593.00 to the Assiniboine Tribe of the Fort Peck Indian Community, Montana, and the Assiniboine Tribe of the Fort Belknap Indian Community, Montana, as representatives of the Assiniboine Nation.

The first section of S. 1148 provides for the distribution of funds awarded in Court of Claims Docket Numbered 10–81L. The award would be divided with 42.5 percent of the funds to the Assiniboine of the Fort Belknap Indian Community, Montana, and 57.5 percent to the Assiniboine Tribe of the Fort Peck Indian Community, Montana.

Section 2 would provide for the updating of the roll of tribal members, and distribution of funds apportioned to the Fort Belknap Indian Community. After preparation of the roll, the Secretary would make a per capita distribution of 80 percent of the funds to each enrollee. The remaining 20 percent of the funds would be held in trust and invested by the Secretary for the benefit of the tribal members. Each year, all enrollees living on November 15, would be eligible for an annual interest payment.

Section 3 would provide for the updating of the roll of tribal members and distribution of the funds apportioned to the Assiniboine Tribe of the Fort Peck Indian Community. After updating of the roll, the Secretary would make a per capita distribution of 70 percent of the funds to each en-

rollee who at is least one-fourth degree Indian blood but not less than one-eighth degree for Peck Assiniboine blood.

The remaining 30 percent would be invested by the Secretary and administered by the Fort Peck Assiniboine Council for social and economic development.

Section 4 would provide that the per capita shares of living competent adults would be paid directly to them. Shares of deceased, legal incompetent, and minor beneficiaries would be handled according to the provisions of 43 CFR, part 4, subpart D, 25 CFR 115.5, and 25 CFR 87.10(A) and (B)(1) and 25 CFR 115.4, respectively. We suggest that the provision be amended to delete reference te specific regulations and instead refer to "regulation of the secretary" to avoid problems which may arise from amendment or renumbering the regulations subsequent to enactment of the bill.

Section 5 would provide that none of the funds distributed per capita or held in trust would be subject to Federal income and State tax, the per capita payments would not be considered as income or resources for determining eligibility for assistance under any Federal or federally-assisted programs.

Section 6 would authorize the Secretary to prescribe rules and regulations to carry out the above provisions, if enacted, including the establishment of deadline for filing applications for enrollment.

In section 3(A), line 4, insert a period following "enrollee" and strike the remainder of the sentence.

This proposed amendment would provide that the roll of those eligible to share in per capita distribution of the Fort Peck Assiniboine portion of the judgment would consist of the presently enrolled Assiniboine of Fort Peck with the roll made current as the date of enactment of this act. This deletion is in accordance with the wishes of the duly elected officials of the Fort Peck Reservation.

Section 3(A)4 as presently written makes per capita payments to only those with one-quarter degree Assiniboine blood or more and those who have met and are on the Assiniboine roll regardless of their percentage of Assiniboine blood. There are 3,276 enrolled Assiniboine at Fort Peck. Some 2.117 are one-quarter or more degree Assiniboine; another 580 qualify as one-eighth degree Assiniboine but total one-quarter degree Indian blood thus qualifying under this proposed legislation. But an additional 579 are less than one-eighth Assiniboine but one-quarter degree Indian blood in total. Our proposed amendment would include the 579. The Assiniboine on Fort Peck in June 1983, voted 191–160 to pay the per capita to all Assiniboine enrollees. The Fort Peck Tribe's executive board is recognized as the governing body of the reservation. The executive board passed resolution No. 107–82–4 by a vote 9–3 turning down the proposal limiting eligibility to persons who are one-quarter blood Assiniboine or more. The tribe has had an enrollment ordinance since

1960. We do not believe now is the time to create a third class of Indians on the Fort Peck Reservation, i.e., those who, in July, are enrolled members but not able to share in the present award.

We also suggest the following clarifying amendment on page 2, section 2, lines 13–14, and page 3, section 3, lines 20–21, to amend the provisos to read "that a person may only elect to share as a tribal member in the award of one tribe under this act."

This concludes my prepared statement, and I shall be pleased to respond to any questions you may have.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the committee notes that no changes in existing law are made by S. 1148 as amended.

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